IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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| EDGAR JOHNSON, | ) | |
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| Plaintiff, | ) | |
| | ) | |
| v. | ) | 03 CV 2567 Ma/P |
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| HOME TECH SERVICES CO., INC., ET AL., | ) | |
| | ) | |
| | ) | |
| Defendants. | | |

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ORDER DENYING PLAINTIFF'S MOTION FOR JOINDER OF
CHARLENE SPINKS AND BOBBIE CARR

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Before the court is plaintiff Edgar Johnson's Motion for Joinder of Charlene Spinks and Bobbie Carr, filed on August 20, 2003 (docket entry 2). In his motion, Johnson seeks to amend his complaint pursuant to Fed.R.Civ.P. ("Rule") 15(a) by joining Charlene Spinks and Bobbie Carr, both of whom are currently plaintiffs in separately filed lawsuits in this district.[1] See Spinks v. Home Tech Services Co., Inc., et al., 03 CV 2568 (W.D. Tenn. 2003); Carr v. Home Tech Services Co., Inc., et al., 03 CV 2569 (W.D. Tenn. 2003). Alternatively, Johnson asks the court to join plaintiffs Spinks and Carr pursuant to Rule 21. Johnson contends that all three cases involve the same series of transactions and occurrences and share common questions of law and

[1]The three plaintiffs all share the same attorneys.

fact.

The defendants oppose joinder, and have filed responses to Johnson's motion.[2] On October 23, 2003, the court held a scheduling conference in this case pursuant to Rule 16(b), at which time the court heard argument on the motion. The court has carefully considered the arguments of counsel and the memoranda of law filed by the parties. For the reasons below, Johnson's motion for joinder is denied.

## I. BACKGROUND

In their proposed Amended Complaint, the plaintiffs allege that the defendants engaged in a predatory lending scheme targeted at African-American homeowners. They contend that defendants Memphis Financial Services, Inc. ("MFS"), a mortgage company, and Home Tech Services Co. ("Home Tech"), a home improvement company – both owned and operated by defendants Earnest and Chandra Wells – lured "unsuspecting and unsophisticated African-American homeowners into exploitative mortgage loans, ostensibly to finance home repairs or home improvement work." Plaintiffs further assert that

[2]Defendant Wachovia Bank of Delaware National Association filed its response on September 26, 2003. Defendants Home Tech Services Co., Memphis Financial Services, Worldwide Mortgage Corp., Earnest Wells, and Chandra Wells filed a joint response on October 10, 2003. Defendant Equity Title and Escrow Co. of Memphis filed its response on October 15, 2003. Novastar Mortgage, a defendant in the lawsuits separately filed by plaintiffs Spinks and Carr and named as a defendant in Johnson's proposed Amended Complaint, was granted leave to appear for the limited purpose of opposing Johnson's motion, and filed its response on October 17, 2003.

in addition to financing over-priced home repairs, the loan applications were prepared for the purpose of refinancing existing mortgages and debt consolidation, which the plaintiffs opposed. Plaintiffs claim that no one explained the closing documents to them, they did not receive copies of closing documents, and the loans were accompanied by excessive interest rates, fees and closing costs. In addition to MFS, Home Tech, and their owners, the predatory scheme allegedly involved a loan processor, financial institutions, a title company and one of its owners, an appraiser, an attorney, and a law firm.[3]

**A. Summary of Allegations Relating to Edgar Johnson**[4]

Edgar Johnson is an 80 year-old African American man who owns a house in Memphis, Tennessee. Sometime in July 2002, while shopping at the Mega Market grocery store in Memphis, Johnson was approached by a representative of MFS. MFS had a tent set up in the grocery store's parking lot, and was advertising its home improvement loans. Since Johnson needed work done on his house, he gave his contact information to the MFS representative, and took a pamphlet and form. Johnson completed the form and mailed it to

[3]As discussed *infra*, however, all of these players were not involved in all of the loan transactions at issue in these lawsuits.

[4]For purposes of deciding this motion, the court has summarized the allegations contained in the plaintiffs' proposed Amended Complaint. These are not factual findings of the court.

MFS.[5] Soon thereafter, Johnson received a letter from Eric Davis, a MFS representative, stating that he had been pre-approved for a home improvement loan. After receiving this letter, a Home Tech representative met with Johnson at his house. The Home Tech representative completed a loan application that was later submitted to MFS for processing.[6] Johnson informed the Home Tech representative that he did not want to use the loan proceeds to pay off his outstanding bills.[7] During this meeting, Johnson entered into a contract with Home Tech for home repair. Johnson was not shown the contract, but was assured by the Home Tech representative that MFS would oversee all the repair work.

On July 31, 2002, Davis and an unidentified woman met with Johnson at his house to close on the loan. Johnson did not receive loan disclosure documents, a good-faith estimate of closing costs, copies of his Notice of Right to Rescind, or documents indicating a notary signature or seal. At closing, no one explained any of

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[5]At the time, Home Tech and MFS were located in the same office building. Since the time of the loan transactions at issue in these lawsuits, Home Tech and MFS have been reincorporated as Worldwide Mortgage Corporation. Earnest and Chandra Wells, who owned and operated MFS and Home Tech, are owners and officers of Worldwide Mortgage.

[6]The proposed Amended Complaint does not indicate whether Johnson assisted in filling out the loan application.

[7]At some point, Johnson was told that his credit card bills had to be paid off in order for him to obtain the loan through MFS. Johnson does not allege that any of his credit card bills were, in fact, consolidated or paid off with the loan proceeds.

the documents to him. No representative from the title company (defendant Equity Title and Escrow Co. of Memphis, LLC, or "Equity Title") was present. Steven Wenkel,[8] one of the principal owners of Equity Title, notarized Johnson's signature on the Deed of Trust, even though Johnson had never met Wenkel and did not sign the deed in Wenkel's presence. Equity Title received miscellaneous unearned fees in excess of $500.00. An attorney named Cary Califf was listed on the closing documents even though Johnson had never met Califf and did not have legal representation at closing. An appraiser named Gregg Drew was listed on the closing documents as being paid a fee for appraisal work that he never performed. MFS received over $1,000.00 in unnecessary loan origination and document preparation fees.

Johnson's ten-year loan was in the amount of $21,230.50 with an Annual Percentage Rate ("APR") of 9.639% without a pre-payment penalty. Although MFS was listed as the lender on the agreement, based on a prior purchase pledge between defendant Wachovia Bank of Delaware ("Wachovia") and MFS, MFS assigned the loan to Wachovia on July 31, 2002. Wachovia determined the "features present in the loan" and currently owns the loan.

Sometime in September 2002, Home Tech began work on Johnson's house. The cost for the repair work totaled $19,866.00, which was

[8]At various times, "Steven Wenkel" appears as "Stephen Winkel" in the proposed Amended Complaint.

paid to Home Tech directly from the loan proceeds before any work was performed. The contractor who initially began work on Johnson's house caused damage to the house through poor workmanship, and workers stole items from Johnson's home. The repairs were never properly completed. Johnson also claims that at the July 2002 closing, he signed a separate contract to have Home Tech install central air conditioning and heating in his house for an additional $5,500.00. The central heat and air conditioning systems were not installed in a workmanlike manner.

**B. Summary of Allegations Relating to Bobbie Carr**

Bobbie Carr is a 66 year-old African American woman who resides in Memphis. In January 2002, Carr, who was interested in having her kitchen repaired, contacted Home Tech and made an appointment to meet with Chandra Wells at MFS's office.[9] On February 13, 2002, Carr went to MFS and met with Ms. Wells, who told Carr that Home Tech could make the kitchen repairs that she wanted.[10] On February 20, 2002, Carr received a call from Ms. Wells, who told Carr to come to MFS for her closing. That same day, Carr went to MFS's office and met with Nina Towns. [11] Towns,

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[9]Carr does not state how she first learned about Home Tech.

[10]Carr also alleges that, after this meeting, she was "randomly approached" at home by a door-to-door Home Tech salesman named "Jay." Jay told Carr that Home Tech could perform the kitchen repairs she wanted for $5,000.00.

[11]Towns is a loan processor who works at MFS. Her name appears in the proposed Amended Complaint as "Towns" and

who was the only other person present at closing, attempted to hide certain information on the documents, and repeatedly instructed Carr to "sign here" without any explanation. Because Carr felt uncomfortable with what was happening, she left without completing the closing.

Later, Ms. Wells called Carr and convinced her to return to MFS for the closing. This time, Carr met only with Ms. Wells, who similarly instructed Carr to "sign here" without explaining any of the documents to her. Carr did not receive any disclosure of credit terms or a good faith estimate of closing costs. MFS said that it would pay the property taxes and insurance, and several credit card bills for Carr, even though Carr did not request money to pay creditors. However, the credit card bills were not paid off, and the property taxes were paid only after Carr complained several times to Ms. Wells. Although Equity Title was listed as the settlement agent on the settlement statement, no one from the company attended the closing. Wenkel notarized Carr's signature on the Deed of Trust, even though Carr had never met Wenkel and did not sign the deed in Wenkel's presence. Equity Title received miscellaneous unearned fees in excess of $700.00. Drew was listed as the appraiser, but did not conduct an appraisal of Carr's home. MFS received a loan origination fee of $2,100.00.

The total amount financed on the 30-year loan was $47,694.00

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"Townes."

with an APR of 10.805% and a pre-payment penalty. The lender and current owner of the loan is Novastar Mortgage ("Novastar"). Novastar determined the manner in which the loan was made, the interest rate, and other features of the loan. MFS received a $510.00 "kickback" from Novastar for the loan. Defendant Economic Advantage received a one time fee of $500.00 and a $4.00 per deduction fee to deduct mortgage payments from Carr's bank account. MFS received a "financial benefit" from Economic Advantage for directing its customers to use the automatic deduction program. Carr received only $988.00 from the loan. Home Tech never performed any repair work, and the kitchen was never repaired.

**C. Summary of Allegations Relating to Charlene Spinks**

Charlene Spinks is a 42 year-old African American woman who resides in Memphis. In September 2001, MFS had a booth set up in the parking lot of the Krogers grocery store, advertising its home improvement loans. Spinks was shopping at the grocery store when she was approached by an unidentified MFS employee. Spinks "signed up" because she wanted plumbing and electrical repair work done on her home. In October 2001, a MFS representative called Spinks and made an appointment to come to her house. Two days later, a Home Tech representative arrived at Spinks's house. During the meeting, the Home Tech representative filled out a loan application and had Spinks sign the application. The application fraudulently indicated that Spinks's monthly income was $1,745.00, even though

her income was actually much less. About one week later, Nina Towns called Spinks and informed her that her loan was approved.

On January 2, 2002, Spinks and a friend, Freddie Mays, went to the MFS office for the closing. An MFS agent, believed to be Chandra Wells, drove Spinks and Mays to the law office of defendant Perkins, Johnson, and Settle, P.L.L.C. At the law office, Spinks signed the closing documents in the presence of Ms. Wells and a woman named "Carla" who worked at the law firm.[12] At the time, Spinks thought that the closing documents she was signing were actually contracts to have her plumbing and electrical repaired, and to have a new room built. She was also handed a stack of checks, totaling $4,259.00, which were made out to various creditors, even though she never requested money to pay creditors. She was told that the checks were for her outstanding debts that had to be paid in order for her loan to be approved.[13]

At closing, she was repeatedly told to "sign here," and none of the documents were explained to her. Spinks did not receive copies of the closing documents, nor was she informed of her right to cancel. The settlement statement shows a fee of $300.00 for an appraisal by Gregg Drew, even though no such appraisal was

[12]On January 3, 2002, Towns and Ms. Wells went to Spinks's house to have her estranged husband sign additional closing documents. Mr. Spinks also did not receive copies of the documents he signed.

[13]The law firm kept the $4,259.00 in its escrow account, and did not disburse the funds.

conducted. MFS received a $2,000.00 loan origination fee and a $400.00 "kickback" from Novastar, the lender and current owner of the loan.

The amount financed on the 30-year loan was $36,848.00 with an APR of 9.415% and a pre-payment penalty. Novastar determined the manner in which the loan was to be made as well as the interest rate and other features of the loan. Spinks only received $2,000.00 of the loan proceeds. Neither Home Tech nor MFS performed any repairs on Spinks's home. Instead, Spinks used the $2,000.00 to hire someone else to do the plumbing and electrical repairs. She did not have enough money left over to build the new addition to her home.

**D. The Proposed Amended Complaint**

On July 31, 2003, plaintiffs Johnson, Carr, and Spinks attempted to file a single complaint against the defendants asserting claims arising from the three loans described above. The complaint alleged violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., the Fair Housing Act, 42 U.S.C. § 3601 et seq., the Truth in Lending Act, 15 U.S.C. § 1601 et seq., the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq., the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq., the Tennessee Consumer Protection Act, T.C.A. § 47-18-101 et seq.; fraud, conversion, negligent misrepresentation, breach of fiduciary duty, breach of

contract, and conspiracy.[14]

The Clerk of the Court ("the Clerk") refused to accept the complaint because "there were separate sets of facts for each plaintiff." (Johnson Mem. in Support of Mot. for Joinder at 1) Thereafter, each plaintiff separately filed a complaint: Johnson filed his complaint on July 31, 2003, and Carr and Spinks each filed their complaints on August 1, 2003. On August 20, 2003, Johnson filed the present motion seeking to join Spinks and Carr as plaintiffs. Attached to his motion is the proposed Amended Complaint, which the plaintiffs had tried unsuccessfully to file on July 31, 2003.

## II. DISCUSSION

Johnson's motion for joinder is based on two arguments. First, Johnson asserts that Rule 15(a) allows him to amend the complaint to join plaintiffs Carr and Spinks as a matter of course. Under Rule 15(a), "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . . Otherwise a party may amend the party's pleading only by leave of court . . . ; and leave shall be freely given when justice so requires." Johnson contends that because he filed the present motion before the defendants have served their responsive pleadings – and especially given the fact that he and the other plaintiffs initially attempted to file a consolidated complaint

[14]Johnson also brings an unconscionability claim.

with the Clerk – Rule 15(a) allows him to amend his complaint without leave of court.[15] Second, Johnson asks the court for leave to join Carr and Spinks as plaintiffs under Rule 21.[16]

With respect to Johnson's first argument, the courts are divided on the issue of whether, prior to service of a responsive pleading, a party may amend its pleading under Rule 15(a) to add or drop parties without first obtaining leave of court. Some courts take the position that joining parties is governed by Rule 21, and that an amended pleading that changes the parties requires leave of court even though it is filed before a responsive pleading is served. See, e.g., Williams v. United States Postal Serv., 873 F.2d 1069, 1072 n.2 (7th Cir. 1989); United States ex rel. Tucker v. Thomas Howell Kiewit (USA) Inc., 149 F.R.D. 125, 126 (E.D. Va. 1993); International Bhd. of Teamsters v. AFL-CIO, 32 F.R.D. 441 (E.D. Mich. 1963).

Other courts and commentators, however, take the position that

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[15]The defendants have not yet filed answers to Johnson's complaint. Although some of the defendants have filed motions to dismiss, these are not considered responsive pleadings within the meaning of Rule 15(a). Youn v. Track, Inc., 324 F.3d 409, 415 n.6 (6th Cir. 2003).

[16]Rule 21 provides as follows:

> Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

prior to service of a responsive pleading, parties may amend pleadings under Rule 15(a) to add or drop parties without leave of court. See, e.g., United States ex rel Precision Co. v. Koch Indus., Inc., 31 F.3d 1015, 1018-19 (10th Cir. 1994); Washington v. New York City Bd. of Estimate, 709 F.2d 792, 795 (2d Cir. 1983); McClellan v. Mississippi Power & Light Co., 526 F.2d 870, 872-73 (5th Cir. 1976), mod. in part on other grounds, 545 F.2d 919 (5th Cir. 1977); Matthews Metals Products, Inc. v. RBM Precision Metal Products, Inc., 186 F.R.D. 581, 583 (N.D. Cal. 1999); Singh v. Prudential Ins. Co. of America, Inc., 200 F.Supp.2d 193, 196-97 (E.D.N.Y. 2002); accord 6 Wright, Miller & Kane, Federal Practice and Procedure § 1479 at 571-72 (2d ed. 1990); 3 James Wm. Moore et al., Moore's Federal Practice § 15.16[1] at 15-54 (3d ed. 2000).

Although the Sixth Circuit has not yet opined on this issue,[17]

[17]This court could find only one reported case in which the issue was presented to the Sixth Circuit. Ludwig v. Board of Trustees of Ferris State Univ., 123 F.3d 404 (6th Cir. 1997). In Ludwig, the plaintiff brought a § 1983 action in state court against the university and other individual defendants. Id. at 407. Following the defendants' removal of the action to federal court, the defendants filed a motion to dismiss under Rule 12(b)(6). The plaintiff then filed an amended complaint that dropped certain defendants and added others. The defendants responded by moving to strike the amended complaint. The district court granted the motion to strike "based on a strict reading of Rule 21," and granted defendants' motion to dismiss. On appeal, the plaintiff argued (among other things) that the district court erred in striking his amended complaint under Rule 21 "rather than permitting an amendment without leave of the court pursuant to Rule 15 . . . ." The Court of Appeals declined to rule on this issue, since "we have concluded that plaintiff's claims have failed on the merits." Id. at 411-12.

this court agrees with the courts that hold the latter view. As a general matter, "any attempt to change parties by amendment before the time to amend as of course has expired should be governed by the first sentence of Rule 15(a) and may be made without leave of court." 6 Wright, Miller & Kane, § 1479 at 571. This general principle, however, does not limit the court's authority to consider, either by motion of a party or on its own initiative, whether a party should be added or dropped from the case. See Matthews Metals Products, 186 F.R.D. at 583 (after concluding that plaintiffs could add defendant without leave of court, the court next considered whether that defendant was properly joined under Rule 20(a)). Indeed, any such prohibition on the court's authority would be in direct conflict with Rule 21, which expressly provides that parties may be dropped or added by the court "on its own initiative at any stage of the action and on such terms as are just." Fed.R.Civ.P. 21.

Given the procedural posture of this case, the court believes that no legitimate interest of any of the parties would be disserved if the question of joinder was resolved based on the exhaustive briefs filed to date. "The theory behind the provision for amendments as of course is that the court should not be bothered with passing on amendments to the pleadings at an early stage in the proceedings when the other parties probably will not be prejudiced by any modification." 6 Wright, Miller & Kane, § 1479

at 572. Here, the twin goals of judicial economy and avoiding prejudice to the parties would not be furthered by allowing the plaintiff to amend his complaint, only to have the question of joinder immediately resubmitted to the court for resolution.[18]

The court concludes that Carr and Spinks are not properly joined plaintiffs under Rule 20(a). Under Rule 21, "parties are misjoined when they fail to satisfy either of the preconditions for permissive joinder of parties set forth in Rule 20(a)." 7 Wright, Miller & Kane, § 1683 at 475; see Michaels Bldg. Co. v. Ameritrust Co., N.A., 848 F.2d 674, 682 (6th Cir. 1988); see also Hanna v. Gravett, 262 F.Supp.2d 643, 647 (E.D. Va. 2003) ("While Rule 21 is silent on the standard applicable for determining misjoinder, courts have uniformly held that parties are misjoined when they fail to satisfy either of the preconditions for permissive joinder of parties set forth in Rule 20(a).").

Rule 20(a) is designed to promote judicial economy and trial convenience. Bridgeport Music, Inc. v. 11C Music, 202 F.R.D. 229, 231 (M.D. Tenn. 2001); Mosley v. Gen. Motors Corp., 497 F.2d 1330, 1332 (8th Cir. 1974). "Under the rules, the impulse is toward entertaining the broadest possible scope of action consistent with

[18]At the October 23, 2003 scheduling conference, the defendants indicated that if the plaintiff was allowed to amend his complaint as a matter of course under Rule 15(a), then they would move to sever the plaintiffs under Rule 21 due to misjoinder of parties. As discussed *supra*, under Rule 21, the court on its own initiative can (and does) consider whether plaintiffs have been misjoined.

fairness to the parties; joinder of claims, parties and remedies is strongly encouraged." United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 724 (1966). That being said, permissive joinder is circumscribed by the dual requirements of Rule 20(a). A party seeking joinder of claimants under Rule 20(a) must establish both: (1) a right to relief arising out of the same transaction or occurrence, or series of transactions or occurrences, and (2) a question or fact common to all parties must arise in the action. See Fed. R. Civ. P. 20(a).

The thrust of Johnson's argument in support of joinder is that the plaintiffs' ability to prove their RICO claim would be severely hampered if they are not allowed to demonstrate the pattern of racketeering activity in the same lawsuit. On this point, the court finds Papagiannis v. Pontikis, 108 F.R.D. 177 (N.D. Ill. 1985), particularly instructive. In Papagiannis, two plaintiffs filed a single complaint against two companies and three company employees, individually and as company agents, for securities fraud and fraudulent inducement in the purchase of interests in oil wells. Id. at 178. Plaintiffs claimed they were bilked by the defendants after each of the plaintiffs entered into separate contracts concerning separate oil wells after similar misrepresentations were made to them. Id. Plaintiffs asserted various violations of the Securities Act of 1933, Illinois Blue Sky Laws, and RICO. The court concluded that joinder was not proper

under Rule 20(a):

> One essential ingredient of every such [RICO] claim is a "pattern of racketeering activity." . . . it is clear that a malefactor's perpetration of fraudulent activities on more than one victim, while following the same modus operandi, is indeed a "pattern" for RICO purposes. . . . What that means is that each victim can sue the RICO violator, adducing *evidence* of the offense against the other victim to meet the proof requirements of the statute as to a "pattern." But whether the victims can sue *together* remains a function of Fed.R.Civ.P. ("Rule") 20(a), which governs the joinder of plaintiffs in a single lawsuit. . . . [T]he situation also does not present the "same . . . series of transactions or occurrence," for that characterization does not fairly apply to two victims' wholly separate encounters with a confidence man simply because he follows the same routine in cheating each of them. Though the allegedly fraudulent scheme may have been the same as to both victims, face-to-face fraud (as contrasted for example with a securities prospectus misrepresentation) necessarily requires individualized proof.

Id. at 179 (internal citations and footnotes omitted) (emphasis in original); see also Graziose v. Am. Home Prods. Corp., 202 F.R.D. 638, 640 (D. Nev. 2001).

The three plaintiffs in this case have not satisfied Rule 20(a)'s same transaction test. The plaintiffs each obtained separate loans, on separate occasions. The factual circumstances surrounding how each of the plaintiffs first learned about the loans, how they applied for their loans, and whether they entered into other loan-related contracts with certain defendants, differs from one another.[19]

[19]For example, Spinks claims that the Home Tech representative who filled out Spinks's loan application inflated her income on her loan application, while the other plaintiffs

All three loan closings occurred at different times, at different locations, and were handled by different individuals. Johnson's closing took place at his house with Eric Davis and an unidentified woman. Carr's closing took place at MFS with only Ms. Wells present. Spinks's closing took place at a law firm with Ms. Wells and "Carla," who worked at the firm. Thus, the misrepresentations, omissions, and other unlawful conduct that allegedly occurred during the loan closings were committed by different individuals and, thus, would necessarily require individualized proof.

The amount of unearned and excessive closing costs and fees paid to the defendants are different, as are the loan interest rates and terms. Johnson's ten-year loan is owned by defendant Wachovia, while Carr's and Spinks's thirty-year loans are owned by defendant Novastar. Importantly, the proposed Amended Complaint alleges that it was Wachovia and Novastar that determined the "manner" in which the loans were made and the "features present" in the loans. Carr's and Spinks's loans (but not Johnson's) involved an alleged "kickback" paid by Novastar to MFS. Only Carr alleges that MFS received a kickback from Economic Advantage.

Moreover, the nature of the economic injuries and amount of damages are peculiar to each defendant. See Graziose, 202 F.R.D. at 640. The amount of proceeds from the loans, how the proceeds were

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make no such allegation.

disbursed, and the repair work, if any, are not the same for all the plaintiffs. The proceeds from Johnson's loan were paid directly to Home Tech. Johnson had repair work done on his house, but the work was not performed in a workmanlike manner. He also had a separate contract to have central air conditioning and heating systems installed, which were in fact installed (albeit incorrectly). Spinks, who received some proceeds from her loan, had plumbing and electrical repair work done on her home, but not by Home Tech or MFS. Carr, who also received some loan proceeds, did not get any repair work done on her house.[20]

Finally, the fact that the defendants who carried out the scheme vary from plaintiff to plaintiff also weighs against joinder. MFS, Home Tech, Worldwide, Mr. Wells, and Gregg Drew are the core group of defendants named by all of the plaintiffs. However, defendants Equity Title and Wenkel are named by Johnson and Carr, but not Spinks. Defendants Novastar, Ms. Wells, and Towns are named by Spinks and Carr, but not Johnson. Defendant Perkins, Johnson & Settle is named only by Ms. Spinks, defendant Economic Advantage is named only by Carr, and defendants Wachovia

[20]The cases cited by Johnson, Mosley v. General Motors Corp., 497 F.2d 1330 (8th Cir. 1974), and Biglow v. Boeing Co., 201 F.R.D. 519 (D. Kan. 2001), are not applicable here. Those cases involve class actions brought by minority employees against their company-employer, alleging a company-wide discriminatory policy or practice. The present cases involve three separate plaintiffs who were allegedly victims of a predatory scheme that involved different loan transactions, different perpetrators, and different economic injuries.

Bank and Califf are named only by Johnson. Under these circumstances, joinder is not proper. See Graziose, 202 F.R.D. at 639-40 (holding that plaintiffs failed to meet permissive joinder requirements where, among other things, "[n]o two Plaintiff households are making their claims against the exact same set of manufacturing-retailing Defendants."); cf. Hinson v. Norwest Financial South Carolina, Inc., 239 F.3d 611, 618 (4th Cir. 2001) (holding that district court did not abuse its discretion in joining multiple plaintiffs in case that involved similar loans from single lender).

## III. CONCLUSION

For the reasons above, Johnson's motion to join Carr and Spinks is DENIED.

IT IS SO ORDERED.

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TU M. PHAM
United States Magistrate Judge

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Date